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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,683	11/06/2005	Yves Desarzens	1.P566.34	5316
51184 7590 11/28/2007 MOETTELI & ASSOCIATES SARL ST. LEONHARDSTRASSE 4 ST. GALLEN, CH-9000 SWITZERLAND			EXAMINER GEORGE, TARA R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/526,683	Applicant(s) DESARZENS ET AL. <span style="float: right;">CT</span>	
	Examiner Tara R. George	Art Unit 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This action is in response to applicant's amendment received on 9/17/2007.

Claims 1-13 are pending.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-7,9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolford (US Pub. 2003/0181916 A1) in view of Dye (US Pub. 2003/0229356 A1).

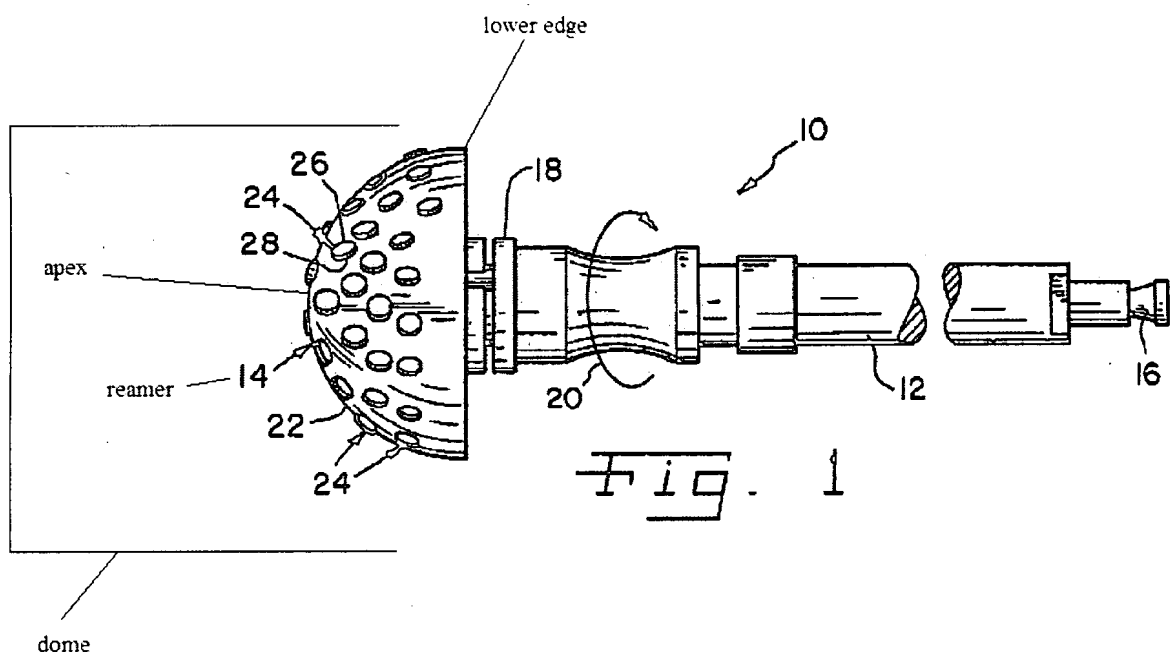
Wolford discloses a reamer comprising a substantially hemispherical, hollow dome extending to a lower edge and defining an equatorial plane and an apex as shown in figure 1 below. As for claim 4, Wolford discloses a plurality of sections 30 of the dome are removed, and as for claim 5, said removed sections are equally spaced about the equator of the dome as shown in figure 1 below. Wolford also discloses, with regard to claims 9,11 and 12 respectively, the interface structure is a portion of at least one cross bar (see para. 20); wherein the interface structure is fixedly attached to the inside of the dome by a single cross bar having a centering boss (see para. 20); and wherein the interface structure is fixed to the inside of the dome by a single cross bar having a central centering hole (see para. 20). With regard to claim 10, Wolford

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discloses at least one cross bar and it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the interface structure of Wolford having a plurality of cross bars, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Wolford discloses the claimed invention except for a reamer spindle interface structure fixedly attached to the inside of the dome so as to completely and substantially inset the interface structure inwardly from the edge and within the dome as per claim 1, wherein the interface structure is attached via at least one internal junction which is entirely recessed within the dome above the equatorial plane as stated in claim 2, wherein the interface structure is fixedly attached to the inside of the dome via a junction located approximately at the apex of the dome, as per claim 6, or substantially along the latitudinal plane of the interface structure, as per claim 7, and an angled reamer spindle as per claim 13. Dye discloses an interface structure 16 fixedly attached to the inside of the dome so as to completely and substantially inset the interface structure inwardly from the edge and within the dome as per claim 1 (see para. 66, para. 69 and para. 77), wherein the interface structure is attached via at least one internal junction which is entirely recessed within the dome above the equatorial plane as stated in claim 2 (see para. 77), wherein the interface structure is fixedly attached to the inside of the dome via a junction located approximately at the apex of the dome, as per claim 6 (see para. 77), or substantially along the latitudinal plane of the interface structure, as per claim 7 (see para. 77), and an angled spindle 22 as per claim 13, in

order to provide an assembly that provides minimum invasiveness of orthopedic surgery (see para. 18). It would have been obvious to one skilled in the art at the time the invention was made to construct the reamer of Wolford with the reamer spindle assembly in view of Dye in order to provide an assembly that provides minimum invasiveness of orthopedic surgery.



Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolford (US Pub. 2003/0181916 A1) in view of Dye (US Pub. 2003/0229356 A1 as applied to claim 1 above, and further in view of Wolford et al. (US Pub. 2006/0189994).

The combination of Wolford and Dye discloses the claimed invention except for a dome having at least one substantial section removed so as to reduce a static insertion profile of the reamer, as per claim 3, and wherein the section removed renders the dome asymmetrical, as per claim 8. Wolford et al. discloses a dome having at least one

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substantial section removed so as to reduce a static insertion profile of the reamer (see para. 6) and wherein the section removed renders the dome asymmetrical as shown in figure 1, in order to minimize the invasiveness of surgery (see para. 8). It would have been obvious to one skilled in the art at the time the invention was made to construct the reamer of the combination of Wolford in view of Dye with a dome having at least one substantial section removed so as to reduce a static insertion profile of the reamer and wherein the section removed renders the dome asymmetrical in view of Wolford et al., in order to provide an assembly that provides minimum invasiveness of orthopedic surgery.

### ***Response to Arguments***

Please note that the advisory action dated 9/19/2007 was made improper by the entering of the request for reconsideration dated 9/17/2007 and this action will be considered a first action on the merits.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dye was used only to teach structure that reduces the invasiveness of surgery.

In response to applicant's arguments about the substance of the rejection of claims 3 and 8, it is noted that the additional Wolford reference teaches removing a section of the dome in order to minimize the invasiveness of surgery, as taught above.

### ***Conclusion***

Any inquiry concerning this communication should be directed to Tara George whose telephone number is 571-272-3402. The examiner can normally be reached on M-F 8am-5pm. If attempts to reach examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or Public PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions about access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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EDUARDO ROBERT  
PATENT EXAMINER